

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 7
RONALD KEITH CLARK, aka/dba	)	
Clark Investors, and VICTORIA	)	No. BK 89-40744
JEAN CLARK,	)	
	)	
Debtor(s).	)	
	)	
RONALD KEITH CLARK, aka/dba	)	
Clark Investors, and VICTORIA	)	
JEAN CLARK,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ADVERSARY NO.
	)	89-0276
PEOPLES BANK OF MARION,	)	
an Illinois banking	)	
corporation,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

The Peoples Bank of Marion ("Peoples Bank") seeks dismissal of an action filed by the debtors, Ronald and Victoria Clark, asserting that the Court lost subject matter jurisdiction to hear the action upon entry of the debtors' discharge. The debtors filed their Chapter 7 bankruptcy petition on August 7, 1989, and, on November 9, 1989, the Court entered an order of discharge and gave notice that the case would be closed upon receipt of the trustee's no-asset report. On December 29, 1989, after the discharge but before a no-asset report was filed, the debtors commenced an adversary proceeding against Peoples Bank, seeking to avoid a mortgage on their residence held by the Bank. The Bank contends that entry of the debtors' discharge constituted an abandonment so that this Court is without jurisdiction to hear the

debtors'  
complaint.

The complaint alleges that, in 1984, Peoples Bank financed construction of an office building for Clark Investors, a limited partnership of which Ronald Clark was a general partner. The loan was originally secured by a mortgage on the partnership's property. In 1986, Peoples Bank obtained a mortgage on the Clarks' residence as further security for the loan.

In 1987, Ronald Clark was sued by his partners in Clark Investors for an accounting of the partnership affairs. That suit was settled when Clark agreed to resign as general partner. The debtors allege that, as part of the agreement, Peoples Bank promised to release the mortgage on their residence. The Bank failed to release the mortgage, prompting the debtors' complaint for avoidance of the mortgage lien.

The debtors' action is a "related to" proceeding coming within the Court's jurisdiction if it affects the amount of property available for distribution in their bankruptcy case or the allocation of property among creditors of the estate. See Matter of Xonics, Inc., 813 F.2d 127 (7th Cir. 1987); Matter of Kubly, 818 F.2d 643 (7th Cir. 1987). Peoples Bank contends that the action does not affect administration of the debtors' estate because, upon discharge, any property remaining in the estate became abandoned to the debtors. The Bank asserts, therefore, that recovery from the present action would inure to the debtors personally rather than to their creditors and that this Court should dismiss the action for lack of jurisdiction.

Under 11 U.S.C. §554, there are three ways that property can be

abandoned from a debtor's bankruptcy estate. In re Reed, 89 B.R. 100 (Bankr. C.D. Cal. 1988). The trustee or another party in interest may apply to the court to approve or order an abandonment. 11 U.S.C. §554(a), (b). Both of these methods require notice and a hearing to the extent appropriate under the circumstances. See 4 Collier on Bankruptcy, par. 544.02[4] (14th ed. 1989). Further, section 554 (c) provides that any scheduled property not otherwise administered is deemed abandoned upon the closing of the case. See Behrens v. Woodhaven Association, 87 B.R. 971 (Bankr. N.D. Ill. 1988).

Peoples Bank concedes that the Court never ordered the abandonment of debtors' residence as property of the estate but contends, rather, that this property was deemed abandoned upon debtors' discharge. This contention runs counter to the express language of section 554. Under that section, deemed abandonment occurs only when the case is closed. Here, the debtors' bankruptcy case was to be closed upon receipt of the trustee's no-asset report. Since no report has been filed, the case remains open and the debtors' residence continues to be property of the estate.

The trustee has taken no action with respect to the debtors' residence because the known liens exceeded the value of the property.<sup>1</sup> If, however, the debtors succeed in avoiding the second mortgage held by Peoples Bank, there will be assets available for distribution to

---

<sup>1</sup>The debtors' house, valued at \$80,000 in their bankruptcy schedules, is subject to a first mortgage of \$48,948.06 in favor of Heritage Federal Savings and Loan and a second mortgage of \$427,000 in favor of Peoples Bank. The debtors claim a homestead exemption in the amount of \$15,000.

unsecured creditors after deduction of the debtors' homestead exemption. Because the outcome of the debtors' action could affect the dividend to be paid to unsecured creditors, the action is "related to" the debtors' bankruptcy case and so comes within this Court's jurisdiction under the test set forth in Xonics.

IT IS ORDERED, therefore, that the motion of Peoples Bank to dismiss for lack of subject matter jurisdiction is DENIED.

\_\_\_\_\_/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

\_\_\_\_\_  
ENTERED: March 20, 1990